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> "Unemployment falls with special cruelty on minority groups. The unemployment rate of Negro workers is more than twice as high as that of the working force as a whole. In many of our larger cities both North and South, the number of jobless youth---often 20 percent or more creates an atmosphere of frustration, resentment and unrest which does not bode well for the future.--- Finally racial discrimination in employment must be eliminated." (italics in the original). -- Proposed Civil Rights Act of 1963 submitted to Congress by President John F. Kennedy on June 19, 1963.

Introduction

Although Title VII of the Civil Rights Act of 1964 prohibited discrimination in all aspects of the employment process, on account of race, color, religion, sex, or national origin, initially the elimination of racial discrimination was the primary objective. The national consensus based on the Congressional debate of Title VII, opinion polls, and media coverage was that the wide disparity between the economic status of blacks and whites threatened the social fabric of the nation and necessitated extraordinary interventions in labor markets by the Federal government.[1/] During the first five years of implementation of Title VII by the Equal Employment Opportunity Commission, the major issues were racially segregated workplaces, tests as predictors of job

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performance of blacks, merger of seniority lines that had been established along racial lines, and opportunities for occupational advancement of qualified blacks who had been concentrated in low level jobs.

Thus, the racial focus of this assessment of Title VII, twenty years later, is an attempt to understand connections between the administration of antidiscrimination laws and changes in the economic status of blacks. Since fiscal year 1966 when the Equal Employment Opportunity Commission was first overwhelmed with charges filed by individuals alleging employment discrimination, racial discrimination has accounted for approximately half of the volume of new charges. Statistics on employment and income in the 1980's indicate that blacks relative to whites are apparently no better off than they were two decades ago. Does the substantial racial economic disparity that still remains mean that the problem is more than labor market discrimination? The lingering effects of past discrimination in education and housing still limit labor market options for large numbers of black workers. Is racial economic equality in the U. S. an attainable objective?

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 governs discrimination in employment by private employers with 15 or more employees, governments, unions, and employment agencies. The Equal Employment Opportunity Commission responsible for the administration of Title VII regularly collects compliance reports from most of these organizations. Executive Order 11246, signed in 1965, is administered by the Office of Contract Compliance Programs (OFCCP) of the Department of Labor. The executive order established rules for non-discrimination by federal contractors, first-tier sub-contractors, and federally assisted construction projects.

Contractors with 50 or more employees and contracts of $50,000 or more must develop affirmative action compliance programs with goals and timetables for completion. The activities of both EEOC and OFCCP are treated in this report as regulation of federal employment discrimination laws.

The considerable proliferation of minority groups seeking protection under the Title VII umbrella has produced the strange result that approximately two-thirds of a civilian labor force of 110 million individuals claim minority status. The equal employment opportunity framework is being strained by supporting such a large minority band-wagon. The several constituencies have sometimes formed coalitions to achieve common objectives but just as frequently competed fiercely for limited resources. We will comment later on what has been called a "majority of minorities."

Black economic progress or lack of it since 1964 has become a source of controversy within the social science research community, especially among labor market economists who have engaged in major methodological debates. Since contradictory answers are provided by their studies, it is important to understand some of the issues from this by now extensive literature. The sizeable body of economic studies on the employment status and economic well being of blacks has been developed from a variety of data sets. Some researchers (Freeman, Darity and Myers, Smith and Welch, Brown, and Vroman) have utilized Current Population Surveys, National Longitudinal Surveys, Census of Population data, Social Security data, and the Michigan Panel Survey of Income Dynamics for their time series.[2/] Call these Categories Type I labor market economists. Other researchers have measured the impact of federal

employment discrimination programs (Ashenfelter, Burman, Heckman, Goldstein, and Leonard) by statistical analysis of primary data (EEO-1 and compliance reviews) from the two federal agencies with the major responsibility for the regulations.[3/] Call these Category Type II labor market economists.

There is more consensus within Category II type researchers than within the first group. Nearly all of the former found that the black male employment share increased relatively more in contractor establishments under affirmative action obligation than in non-contractor establishments. Some of these studies showed little or mixed results on occupational upgrading, but the most recent impact analysis by Leonard for the period 1974-1980 reports net occupational upgrading for black males.[4/] A third group of researchers might be classified as process evaluators. Studies from the U. S. Civil Rights Commission, the General Accounting Office, and various Congressional committees have highlighted ineffective implementation of the antidiscrimination laws. Since these reports have not been economic studies they will not be discussed here.

After a brief review of the economic status of blacks today, and a survey of the economic literature and progress of the past twenty years, I will devote the remainder of the paper to strategic concerns. A fairly extensive discussion on the role of labor unions in the employment discrimination arena precedes comments on the most recent decision of the Supreme Court on seniority and layoffs. I conclude that the economic gains attained by blacks during the past twenty years that can be associated with implementation of the employment discrimination laws are far less than what advocates of these policies had initially expected and not as bad as some of the process reviewers have reported. The successes

were mainly in litigation of class action suits and in the implementation of consent decrees, for example the AT&T consent decree. I raise several critical questions and suggest a few challenges for the future.

Framework

Substantial racial economic inequality remains today essentially unchanged and in some instances worse than when the Kennedy Administration submitted the civil rights bill to the Congress in 1963. Again, we note:

(1) Income: Between 1960 and 1982 median incomes for black families averaged 58 percent of white family income, and that this ratio increased slightly during the first part of the period and has declined since 1975.[5/] The 1982 median income of $13,559 for black families compared to $24,603 for white families reflects the less favorable labor market status of blacks and the staggering increases in the proportion of black families headed by women (42 percent of all black families) who either work in low wage jobs, receive public assistance, or combine work and welfare.

The decline in wages and salaries, the most important source of income for blacks, reflects the deterioration of relative employment for blacks especially the young, double digit rates of unemployment for adult workers, and the concentration of blacks at the bottom of the occupational hierarchy. Since 1966 the employment/population ratios (proportion of working age population with a job) have decreased from 57

to 52 percent for blacks compared with an increase of from 57 to 60 percent for whites.[6/] Across occupational categories, even where black workers have similar education and other productivity characteristics, they are less likely to earn the same as whites.

(2) Income Distribution: Within the black community between 1970 and 1980, real income became more unequal. Although blacks had significantly lower incomes than whites at comparable points in the white income distribution, higher income blacks had incomes that were relatively closer to the income of higher income whites than the incomes of lower income blacks were to income of lower income whites. The poorer blacks got poorer.[7/] Meanwhile the median income ratio for dual earner black families accounting for about a third of all black families was 82 percent of white families, ($25,359 vs. $30,801 in 1982).

(3) Employment: There is a large impoverished class of black workers who remain at the bottom of the economic hierarchy. They are the long term unemployed, discouraged workers and other labor market dropouts, involuntary part-time workers, low wage workers, especially women with earnings below the poverty threshold. No one fully understands the causes behind the sharp decline in the labor force participation rates (percent of working age population who are employed or looking for work) of prime-age black males (25-54 years old). By all indications, black workers have experienced a slower recovery from the recent recession.

(4) Poverty: Black families are still three times more likely to be in poverty than whites. In 1982, 34.9 percent of blacks had money

income below the official poverty level of $9,862 for an urban family of four. The poverty ratio for blacks had remained constant around 30 percent but increased sharply between 1980 and 1982 from 31.1 percent to 34.9 percent. Among black households with female heads the poverty rate was 58.8 percent in 1982 compared with 30.9 percent for white-female headed families.[8/] When the market-value value of non-cash benefits such as food stamps, public housing, Medicaid and Medicare is counted, the poverty rate for blacks increased 44 percent between 1979 and 1982.[9/]

Economic Studies of Labor Market Discrimination

Labor market discrimination is usually defined as unequal returns to the same productivity characteristics, or differences in earnings, employment, or occupational status between otherwise comparable workers. The controversy over whether black economic gains after 1964 have been substantial, not so dramatic, or more limited has been debated for more than a decade. What has been the role of antidiscrimination policies in improving black economic gains post-1964? Whether we examine the time series, or impact studies by economists, I believe that we should assess EEO efforts only after 1972. Up until that time both the OFCCP and EEOC experienced difficulties in starting-up. In fact, until 1978 the OFCCP merely served as the coordinating agency for various federal agencies who let contracts for goods and services. OFCCP took several years to specify an operational definition of affirmative action. Not until Order No. 4 was signed in 1970 and the Philadelphia Plan (for the construction industry) with goals and timetables was upheld in 1971 was this agency free to manage the EEO activities of contractors. EEOC similarly had an internal debate over the definition of sex discrimination which lasted

until August 1969 when Title VII was decreed to be paramount over various state protective laws. Also EEOC did not have the power to enforce the law through litigation until the 1972 amendment of Title VII.

Freeman's 1973 report for The Brookings Institution, "Changes in the Labor Market for Black Americans: 1948-1972," set the stage for a decade of high stakes economic and policy analysis on the economic status of blacks. He concluded that,

> "While black-white differences have not disappeared, the convergence in the economic position in the fifties and sixties suggest a virtual collapse in traditional discriminatory patterns in the labor market.---Much of the improvement in the black economic position that took place in the late sixties appears to be the result of governmental and related antidiscriminatory activity associated with the 1964 Civil Rights Act. Previous time trends, more education for blacks, and the general boom of the period cannot account for the sharp increase in relative incomes and the occupational position of blacks after 1964."10/

> In a later study Freeman reported "Measured earnings of workers and occupational attainment, blacks have continued to make significant progress in the 1970's. Measured by the increase in earnings of specific cohorts, black gains did not dissipate due to slow growth of earnings.---We have evaluated the claims that post-1964 labor market gains of blacks disappeared in the 1970's sluggish economy and have rejected those claims. While there are definite areas in which the blacks' position worsened, notably the employment/population ratio, the preponderance of evidence shows continued economic advances."11/

> In another report (1978) he asserts "---the most reasonable explanation of the changes in black economic position since 1964 is that the programs designed to raise demand for black labor have, in fact, done so. We do have evidence which imperfect as it is, suggests that the national discriminatory effort has contributed to black economic progress. As far as can be told from the data, if Title VII were repealed and equal employment opportunity efforts ended the rate of black advancement would fall."12/

In a 1981 report funded by the Hoover Institute, Freeman is still discussing the improvement in the relative economic position of blacks

but underscores that (family) background differences appear to have become a more important impediment than market discrimination to attainment of black-white economic parity among the young.---The implication is that blacks from more advantaged backgrounds made greater gains in the market than those from less advantaged backgrounds (italics in the original).[13/]

Freeman's dramatic improvements findings have been challenged by Darity and Myers who noted the sample selection bias of the Current Population Survey (exclusion of non-labor force participants from the sample). They reestimated wage and salary equations for black and white individuals from the potential labor force instead of from the data set of positive earners only and concluded that the economic progress of blacks over the 1968-1978 decade was much less dramatic than what other researchers had suggested.[14/] Smith and others have rebutted the Darity/Myers critique.[15/]

Darity has been especially critical of the Category I economists (Welch and Smith) who suggested that there was convergence in racial income differentials among young blacks. According to these economists, the reduction of the earnings gap among young people is attributed to the vintage effect hypothesis that black and white cohorts become more similar in productivity characteristics and the more recent cohort of black workers demonstrate a better performance in earnings relative to white workers in the same cohort, than earlier cohorts. These more recent vintages of blacks and whites are more alike because of improvements in the schooling of blacks. Darity criticizes the vintage hypothesis and notes that increasingly similar black and white youth have

increasingly dissimilar probabilities of being employed, and that "opportunities appear to be worsening for younger blacks, rather than improving and that equivalent background characteristics do not necessarily result in mean equivalent wages for the young vintages."[16/]

Heckman and Butler were also skeptical about the "dramatic progress" theme. In their view there was no change in the average productivity between blacks and whites because the blacks with the lowest level of human capital were not in the labor market, but were recipients of income from government transfer programs. Thus, the closing of the racial earnings differences was largely an artifact of selectivity bias. Only the most productive blacks have remained in the labor market and this raises the average level of black earnings relative to whites.[17/] Levy corrected the median earnings for labor market dropouts and found that the relative black earnings did not improve as much as Category Type I researchers had reported.[18/]

The critique among Category Type I researchers continues, but the recent studies of Category Type II researchers will shift the analysis in a new direction. Category II studies are cross-sectional studies of the impact of equal employment opportunity programs where the data sets have been generated by the regulatory agencies. The first attempt to analyze EEO-1 data was done in 1968 by Ashenfelter.[19/] Somewhat later four studies covering the period 1966-1973 (Burman, Ashenfelter-Heckman, Goldstein-Smith, and Heckman-Wolpin) used the EEO-1 data set (reports on race/sex composition of their workers by government contractors and employers covered by Title VII with 100 or more employees) to estimate the impact of OFCCP on the relative employment of blacks in contractor establishments.[20/]

With the exception of the Goldstein-Smith study (1970-1972) all found substantial impact on relative black male employment in contractor firms as compared with non-contractors. Except for the Burman study, there was only a small impact on relative occupational position in contractor establishments. These cross-sectional studies covered the early years, before OFCCP adequately specified the treatment (affirmative action) to be applied to contractor establishments. A recent study by Leonard for the period 1974-1980 shows significantly larger employment gains and net occuptional upgrading for blacks. His results are based on regressions of the effect of contractor and compliance review status on the change in the percent employed by demographic groups at 68,690 contractor establishments subject to affirmative action policies, with more than 16 million employees. Leonard finds that blacks' share of employment increased between 1974 and 1980 more at establishments that were federal contractors than at non-contractors.

> "---black males' employment share grew significantly more by .11 percentage points at establishments that were contractors in 1974 than at non-contractors. This is an increase of 1.4 percent of black males' initial 1974 employment share in the contractor sector of 7.3 percent, after six years under affirmative action. For black females, contractor status was associated with a significant .14 percentage point increase in employment share, or 3.6 percent of their initial 3.8 percent share of employment."[21/]

Analysis of some 27,000 compliance reviews across 11,000 estabments between 1973 and 1981 were shown to have been an effective regulatory tool in increasing black employment. Using data on more than 1,700 class action suits under Title VII Leonard presents evidence that litigation under Title VII of the Civil Rights Act of 1964 has played an important and independent role in advancing the employment of blacks and has had a relatively greater impact than affirmative action.[22/]

Perhaps the most controversial issue tackled is whether affirmative action and Title VII have reduced discrimination or induced reverse discrimination. Using aggregate production functions estimated from a new state by industry data set, Leonard suggests that there is no significant evidence that the increased employment of blacks has been associated with a decline in their relative productivity.[23/]

Another highlight from the Leonard study describes how turnover rates can affect the evaluation of affirmative action. Females and black males at a sample of reviewed establishments had a lower share of terminations relative to hires than other workers. The employment gains engendered by affirmative action do not seem to be transient. Leonard's overall assessment is that while the impact of affirmative action on other groups is unclear, the evidence of his study is that affirmative action and Title VII have been successful in prompting integration of blacks into the workplace. A concurrent study commissioned but not as yet released by OFCCP showed similar more significant relative employment and advancement gains for blacks at contractor establishments as compared with non-contractors.[24/]

Such an extensive new data base and the use of a variety of econometric techniques will surely fuel a new growth industry in labor economics. Before examining a few policy perspectives, I should like to comment on two topics generally overlooked; the role of unions and the effectiveness of consent decrees which are negotiated settlements specifying the procedures for bringing establishments into compliance with the equal employment laws within a given period and usually under the oversight of a federal district judge.

Role of Unions[25/]

The accommodation of unions to equal employment opportunity pressures has ranged from hostility and resistance to cooperation. Conflicts surrounding the referral and training policies of some craft unions in the construction industry, strategies used by several large industrial unions to protect seniority principles, and the enforcement of contract rights through arbitration, represent the areas of significant tension between unions and minority workers. During the past 20 years, the patterns and practices of collective bargaining were severely challenged by the stance of minority workers on these issues. Disputes that arose in the workplace over equal employment opportunity matters were resolved through external mechanisms. Contractual agreement and industrial self-government were pitted against independent statutory rights. (Title VII).

Until recently, blacks, the largest group of minority workers, shared an agenda of common objectives with unions only sporadically. Mutual suspicions on both sides contributed to the hostility and conflict. During the latter part of the nineteenth century, blacks were excluded from membership in many craft unions and, where there were fewer restrictions, were forced to operate in segregated locals.[26/] As late as 1919 blacks were used as strikebreakers in the steel industry, thereby threatening the status of white union members. The gap between the perception by blacks of unions as discriminating organizations, and the reality of unions reflecting the social norms of the status quo, has been reduced over time.

The rise of the CIO and industrial unions in the 1930's greatly increased the number of black union members and helped to reduce some of the tension between unions and black community. After the AFL-CIO merger

in 1955, the rising militancy of black workers and, at times, the violent confrontations over construction jobs again intensified the conflict. During the deep recession of 1974-1975, tensions were exacerbated by the conflict between seniority issues and the implementation of affirmative action programs. The seniority provisions governing layoffs threatened to wipe out the gains made by affirmative action and other enforcement mechanisms of Title VII of the Civil Rights Act of 1964 during the previous decade.

By the end of the decade of the 1970's blacks had increased their membership in many of the largest unions, and they were more visible in union-leadership positions. Although blacks accounted for 11.2 percent of the civilian labor force, they contributed 14.2 percent of labor organization members in 1977.[27/] About 33 percent of all blacks who earn wages and salaries were represented by unions, as compared with 26 percent for whites.

Nevertheless, the interests of black union members will frequently diverge from those of the union leadership and senior white union members, especially on discrimination issues at the local level. This leadership, whether its purpose is to protect the interest of union members or to stabilize the political alignment within the union, resists external pressures to broaden the social perspective of their organizations. By 1978, however, 95 percent of the major collective bargaining agreements (covering 1,000 workers or more) had antidiscrimination clauses.[28/]

Under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, a labor organization is not permitted under Section 703(c):

(1) to exclude or to expel from its membership or otherwise discriminate against any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or applicants for membership or to classify or fail to refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin: or

(3) to cause or attempt to cause an employer to discriminate against any individual in violation of this section.[29/]

Joint labor-management committees controlling apprenticeship or other training and retraining programs were also prohibited from discriminating against an individual because of his race, color, religion, sex, or national origin. Two other sections of Title VII, Section 703(h) which exempts bona fide seniority systems, and Section 703(j) which prohibits preferential treatment, have been at the core of some of the most bitter disputes between unions and minority and women workers.

Since the passage of Title VII of the Civil Rights Act of 1964, unions and the EEOC have endured a strained relationship. The main issue has been whether strenuous good-faith bargaining and grievance processing within the collective bargaining context satisfied the union's duty under Title VII. The courts have held both parties to a collective bargaining agreement responsible for the agreement. The difficulty is in distinguishing between those situations in which a union bargains for or tacitly accepts employment discrimination and those where the union actively resists discriminatin but, because of inadequate bargaining strength, cannot force its position on the contractor.[30/] Many union officials believed that unions could play a positive role in correcting

discriminatory practices. However, some of these officials complained that the EEOC refused to recognize affirmative actions of unions and routinely named unions as defendants.

Role of Unions

(1) Referral Unions in the Construction Industry

The construction industry was the target of extensive confrontations between unions, contractors, and minorities, because the latter group perceived racial exclusion and discrimination to be widespread in the referral unions. From World War II to 1963, successive executive orders imposed an obligation on federal contractors not to discriminate on the basis of race, religion, or national origin, but these regulations lacked jurisdiction over labor unions. In 1963 Executive Order 11114 expanded the antidiscrimination program to include federally assisted construction contracts as well as procurement contractors. Construction unions became more directly involved in implementation of affirmative action objectives because these craft unions operate hiring halls from which workers are referred to employers. By acting as employment intermediaries between their members and contractors, these unions are able to control the supply of labor, and this control was used to exclude minorities from membership, from apprenticeship training programs, and from many kinds of jobs in the skilled construction crafts. Although black construction workers accounted for slightly less than 10 percent of all workers in the construction trades, in 1978 they were still a small percent of electricians (4.8%), plumbers and pipefitters (2.8%), structural metal workers (4.3%), sheet metal workers (2.3%), and the highly skilled crafts. Nevertheless, these mechanical trades did increase their black membership from 1.6 to 4 percent of all referral members between 1969 and 1978.[31/]

What is the present status of minority representation in the construction industry? After millions of dollars expended on outreach and training, implementation of executive orders, and Title VII litigation, the results are not overwhelming. Blacks accounted for 8.2 percent of the referral membership in 1978 as compared with 6.8 percent in 1969. From 1968 to 1980 open-shop contractors tripled their share of the market (from 20 to 60 percent of all new construction.[32/] It would be ironic if the efforts to increase minority participation in the unionized craft sector of the industry came to naught during the decade of the 1980's as that sector generates fewer jobs. Also blacks need to know whether their occupational position has increased, remained the same, or been diminished in the growing non-unionized sector of the construction industry.

(2) Seniority Issues in Industrial Unions

Like the referral craft unions in the construction industry, some of the largest industrial unions have encountered major problems when attempting to deal with equal employment issues. Industrial unions mainly regulate the internal labor markets of companies through collective bargaining procedures, while employers retain control of hiring and initial assignments. The intervention of the government led to restructuring of the seniority provisions of collectively bargained agreements and has forced fundamental changes of the two parties to the agreement.

The treatment of seniority under equal employment opportunity laws is reflected in a series of major court decisions and consent decrees. During the past 22 years the courts have sought to reconcile remedies for past discrimination against minority workers with seniority expectations of majority workers. The definition of "rightful place" remedy, the

restriction of compensation to specific employees, the seniority versus affirmative action tensions of layoffs, and the bona fide seniority system exemption from Title VII are discussed. The Teamsters decision in 1977 removed the seniority modification systems from the courts; however, consent decrees such as that reached with AT&T temporarily overrode seniority provisions. With the Weber decision in 1979, the union in a voluntary agreement with employers modified the seniority arrangement as a way to allocate training slots.

Competitive-status seniority (time in a job, line, department) determines a worker's standing compared to others on transfer, promotion, layoff, and recall. Even in the more favorable economic environment of the late 1960's, black workers were on a collision course with seniority systems that were the product of collective bargaining by some of the largest industrial unions in steel, paper, telephone, and trucking. However, the severe recession of 1974-1975, when the focus shifted from transfer and promotion via seniority systems to layoff and recall, produced the greatest conflict between antidiscrimination agreements and collective bargaining agreements. Unions and civil rights groups who had formerly worked as members of a coalition seeking the passage of Title VII now appeared in court as adversaries. The issue was whether minority workers should maintain the same proportion in a reduced workforce as they held prior to a layoff. If the "last in-first out" (LIFO) procedures were followed, such workers would bear a disproportionate share of the burden of layoff.

The economic recession forced employers in the public sector as well as private employers to reduce their workforces. After 1972, state and local government employees were included under Title VII. Violent confrontations erupted between minority workers and unions representing

police and firefighters when budgetary constraints forced a cutback in many municipal services.

The U. S. Supreme Court reversed lower court rulings in International Brotherhood of Teamsters v. U. S. (1977) and concluded that bona fide seniority systems which tend to perpetuate the effects of pre-Act discrimination were protected under Section 703(h) of Title VII. However, individuals are not barred from relief, including retroactive seniority, because of employer's post-Act hiring discrimination.

The dual aspects of competitive seniority, the promotion and transfer as separate from layoff and recall issues, dominated the court decisions of the first years of implementation of Title VII. The problem of the "incumbent black" and past discrimination produced much of the controversy. Today these "incumbent blacks" are older workers who may prefer the security of remaining in their old departments where they have accumulated seniority. Younger blacks are entering integrated lines along with their white counterparts. Thus, with the retirement of the older black workforce, the issues of promotion and transfer will fade away. Layoff and recall generated controversy in periods of economic recession. Those same younger black workers who may benefit from the new rules of the seniority game in terms of promotion and transfer may be prime candidates for layoff under LIFO rules. As fairly new entrants to many types of jobs, they may not have acquired enough plant seniority to protect themselves in their jobs.

While I was preparing this report the Supreme Court ruled (June 12, 1984) on seniority vs. layoff in the case of the Memphis firefighters. (Firefighters Local No. 1784 v. Carl W. Stotts et al.). Eventually the ruling will be clarified, but I will focus on a narrow interpretation.

Now competitive seniority in transfer, promotion, and layoff has effectively been excluded from the Title VII coverage of workplace procedures. The bona fide seniority system exemption which had been sought since the passage of Title VII was finally achieved, but I think that it may prove to be an empty victory for some unions.

Since the 1970's union membership has declined drastically until at the present time unions represent about 20 percent of the workforce. The decline in members can be attributed to permanent loss of jobs in smoke-stack industry, aggressive anti-union campaigns by employers in the private sector, and shift of the economy away from manufacturing where unions are represented in basic industries, to the service sector. The service industries have not been as easy to organize. As unions have sought new members, they have designed their strategies around the well known fact that black workers have a greater propensity to join unions than other workers.[33/]

If black workers conclude that unions are fair weather friends and that affirmative action will be abandoned in economic downturns, then some major fence mending is required. The bitter fight over the seniority-
layoff issue has occurred mainly in the public sector with firefighters, policemen, and teachers. Seniority principles are imbedded in the American industrial system. Black workers are far more sophisticated now and differentiate between unions on the basis of the programs and the extent to which black members play a meaningful role in shaping the policies of unions.

AT&T Consent Decree

The American Telephone and Telegraph Company (AT&T) consent decree

which was signed in January 1973 and ended six years later was a technique to formalize a variety of personnel procedures in the internal labor markets of the twenty-three telephone operating companies. The agreement between the AT&T, the Equal Employment Opportunity Commission, the Department of Justice and the Department of Labor covered nearly a million employees and effectively restructured the internal labor markets of the telephone companies. Implementation of the decree produced an occupational redistribution of jobs that permitted blacks both to increase their share of all jobs as well as to upgrade their jobs.[34/]

The improved occupational mobility for women and minority employees was achieved through implementation of goals and timetables but more importantly by specifying new career paths and new upgrade and transfer procedures. Although the pay adjustment policies of the decree received considerable national publicity, the use of the mobility mechanism plus the affirmative action override* procedure resulted in better utilization of women and minorities within the internal labor markets. Since these companies had limited hiring from the external labor market of jobs above the few entry level positions, the competition for pay and status was from within. If minorities and women were concentrated in jobs that did not lead to upward mobility, their long-term careers were unduly restricted.

By January 1979, the AT&T management had developed a sophisticated model to track all of its employees (Goal 2); the unions had lost their legal battle over whether the affirmative action override undermined the seniority provisions of their collective bargaining contract and the

*Individuals from protected classes who met the minimum qualifications (rather than best qualified) could be promoted into jobs over more senior workers if the vacancy did not have representation of protected group members.

utilization of black employees had improved significantly. Table two shows an approximate before and after effect.

Prior to the consent decree, black males were only 2.6 percent of total employees and 5.4 percent of all males. In 1972, thirty-four percent of white males were in managerial jobs and 38 percent were in skilled craft jobs that tracked directly into management. The comparable ratios for black males were 9.0 percent in managerial jobs and 21.4 percent in the skilled jobs. By the end of the consent decree the representation of black males among all employees and among males had not changed but 24.2 percent of black males were managers and 32.9 percent were in the skilled craft categories. This improvement in occupational status is important since technology in the telecommunications/computer industry shifts employment away from blue collar workers towards managers.

The implementation of the AT&T consent decree did not require the downgrading of any group and considerable progress was made by women and minorities stemming from the growth in the better jobs. After the termination of the consent decree, the telephone companies continued to accelerate the advancement of protected group members. One lesson from the AT&T consent decree is that minorities do not have to bear the brunt of an investigation into patterns of discrimination in order to benefit from the outcome. The Federal government pursued a deliberate strategy of attacking sex discrimination, and in the process minorities also gained.[35/]

Future Concerns

Granted that there has been some reduction in the economic gap between blacks and whites in selected periods during the past twenty

Table 1

Black Employees in Bell Telephone Operating Companies

December 31, 1972 and September 30, 1978

AAP Job	Job Description	Black Men 1972	Black Men 1978	Black Women 1972	Black Women 1978
1	Middle mgt. and above	79	212	3	56
2	Second level mgt.	308	1,048	116	838
3	Entry level mgt.	1,464	3,715	1,634	4,475
4	Administrative	283	583	2,317	3,657
5	Salesworkers non-mgt.	204	472	119	623
6	Skilled craft (outside)	1,564	3,328	1	162
7	Skilled craft (inside)	2,817	3,420	172	997
8	General services (skilled)[a]	2,150	229	51	51
9	Semiskilled craft (outside)	5,188	4,315	18	453
10	Semiskilled craft (inside)	2,128	2,081	407	1,279
11	Clerical, skilled	446	1,423	8,918	14,777
12	Clerical, semi-skilled	257	1,268	10,274	16,481
13	Clerical, entry level	552	714	8,275	6,758
14	Telephone operators	338	1,102	29,607	18,997
15	Service workers, entry level	2,688	1,622	1,421	1,149
	Total	20,466	20,532	63,333	70,753
	Percent of Total Employees	2.6%	2.6%	8.0%	8.8%

[a] Later dropped from classification

Source: Final Report to the Court on the AT&T Consent Decree

years, how can we assess the overall progress? Let us consider the following:

(1) Researchers who have attempted to evaluate the impact of the employment discrimination laws are examining the demand side of the labor market. During the past twenty years the Federal government has pursued a parallel strategy of enhancement of productivity characteristics of workers from the supply side of the labor market. A variety of employment and training programs, Manpower Development and Training Act (MDTA) and Comprehensive Employment and Training Act (CETA), emphasized improving the skills and expanding employment for the most disadvantaged segment of the work force. Not until the late 1970's when many of these programs were targeted toward structural unemployment could claims be made that the most disadvantaged segment of the black work force gained.

Unfortunately, there has been little effort to link employment and training programs with equal employment opportunity programs. Where poverty and race are intermingled no one program is adequate. One must agree with Loury that affirmative action is not enough. An appropriate labor market strategy might be a mix of programs for different black workers. Recently, the Manpower Demonstration Research Corporation (MDRC) reported that black teenagers who had worked part-time while in school on government subsidized jobs (Youth Incentive Entitlement Pilot Projects) had made measurable gains in employment and earnings some fifteen months after the program ended. The experimental program was operated from 1978 to 1980 and guaranteed minimum wage jobs to 76,000 youths (73 percent black) from low income families.[36/]

This program tested new approaches to the youth employment (1) linking a job offer to school performance requirement, (2) a full scale

job entitlement program to eligible youth in 17 demonstration sites, (3) private sector involvement.[37/] Since this program has clearly demonstrated that the deteriorating employment situation of poor and minority youth can be reversed over a longer period of time, I would urge support of the Hawkins/Kennedy bill which proposes to implement a nationwide targeted job guarantee for poor youth. Such an employment program for black youth would undergird the coping options available to black families.

(2) It would be useful and enlightening for political scientists or policy analysts to examine what for lack of a better term I call the "power relationships" in EEO compliance. In the early days of the EEOC investigation of discrimination at some of the Fortune five hundred companies where one assumed perhaps mistakenly that a corporate social responsibility policy had been articulated, these companies brought pressure to bear from powerful Senators or Congressmen. Thus, implementation of Title VII may have been undermined by individual members of the Congress. Also aggressive enforcement on the law might have threatened the agency budgets.

(3) A sophisticated statistical analysis should be done on the nearly 5,000 Title VII cases that went to the Federal district courts and the nearly 2,000 of such cases that were class action. What happened in the workplaces across the country? After being charged with discrimination many employers drastically modified their personnel procedures even as the litigation was underway. Also some large employers quietly altered procedures when other companies in their industry were charged with violation of the employment discrimination laws.

(4) Blacks are now just one of several groups competing for limited resources in the EEO area. We need to identify those activities where the initial thrust was not from black workers but where blacks benefitted. An example would be around 1970 at the time of the first backlash against Great Society programs including equal employment opportunity, that the unplanned emphasis on sex discrimination and the fact that some thirty-one million women workers perceived that the antidiscrimination laws might improve their labor market status, meant that Title VII was saved for all protected groups, including blacks. It does not follow that a "majority of minorities" will necessarily reduce resources valuable to blacks?

(5) Many researchers have asserted that middle class blacks,---e.g. those that are better educated and trained have benefitted from affirmative action more so than other black workers. If those from the most advantaged background have received disproportionate share of the gains, we certainly need to probe further on the causes. Culp and Loury have noted that black families that achieve higher incomes are less likely to stay permanently in the upper income brackets than whites. Such advances in status are quite tenuous.[38/]

Of course, if well educated blacks had experienced more severe discrimination prior to implementation of the laws, their income adjustment may have been sizeable. Even today a significant percent of well qualified blacks work in the public sector where salaries at the upper end of the scale, are low compared to the private sector. Thus, a big shift of educated blacks out of the public sector (both civilian and career military) into managerial jobs in the private sector could have increased earnings for this group. If the vintage hypothesis holds, what does this portend for the future---a small elite class of blacks where

the economic gap has been sharply reduced and the largest segment of the black workers left behind?

Leonard and Welch disagree on the issue of affirmative action and earnings within the black community. Leonard argues that affirmative action contributed to the occupational upgrading of black males in the late 1970's. His results for federal contractors show that affirmative action appears to reduce inequality among black males across education level by pushing the lowly educated more than the highly educated "---just the opposite of the bifurcation argument."[39/] Since this issue of the split within the black community is both an emotional and divisive one, more analysis might be needed. Many relatively affluent blacks and their organizations are presently devoting more efforts to being their "brother's/sister's keeper."

(6) Any assessment of the impact of equal employment laws on improving the economic status of blacks must examine the alternatives for achieving this objective. I opt for equal results over equality of opportunity. I refer to words of wisdom from a justice and from an economist. In the landmark Griggs v. Duke Power unanimous decision from the Supreme Court in 1971 Justice Burger stated: "But Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation" (italics in the original). I have re-read several times the slim volume by the late Arthur Okun, Equality and Efficiency: The Big Tradeoff, a masterful essay on the extent to which society may restrain the competitive market in order to counterbalance extreme disparities in the distribution of income and wealth. Two years after its publication, Okun had some "Further Thoughts on Equality and Efficiency" (1977) and noted: "---the achievement of reasonable equality

of opportunity in our society requires narrowing the inequality of results in which the current inequalities of opportunity are so deeply rooted." Until a better mechanism is created to aid in the redistribution of jobs, equality of results is my choice. Equality of results is not absolute since good faith efforts more than counter-balance extreme actions.

The tensions surrounding the alternative of establishing a level playing field, would be considerably reduced if the U. S. economy sustained long periods of growth and prosperity. The enormous federal budget deficit of nearly 200 billion dollars will certainly constrain additional expenditures on social programs for the next several years. If, as we have documented in this report, Title VII and the executive order have had a significant impact on black employment and incomes, a more effective utilization of these mechanisms is required. A forthcoming Urban Institute study will document a recent decline in enforcement efforts by OFCCP, the Justice Department, and the EEOC by as much as 80 to 90 percent.

Thus, forty years after the publication of Myrdal's, American Dilemma and twenty years after the passage of Title VII, great economic disparities separate blacks and whites. The impact studies from the economists indicate some success for affirmative action in increasing employment and upgrading occupational status between 1974 and 1980. We have suffered a major setback since then, and the economic climate may be adverse, certainly in the short run. The Memphis firefighters decision is seen by some as a bellwether of a profound and distrubing attempt to turn the clock back to the pre-Title VII era.. Whether some approximation of racial economic equality remains beyond the capability of this society depends on the long, hard struggle that should engage all of us.

Footnotes

1. A much stronger equal employment opportunity bill (H. R. 405) was substituted for the Kennedy administration's proposal (H. R. 7152). In order to secure the widespread support needed for passage, the latter bill was considerably weakened.

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